



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

TRG
Docket No: 3633-99
4 February 2000

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 27 January 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you have completed 20 qualifying years of service for reserve retirement, but you are not eligible for retired pay because you did not meet the active duty service requirements set forth in Title 10 U.S.C. 1331, now renumbered as 12731. This law denies retired pay to individuals who were members of reserve components who did not serve on active duty during World War I, World War II, Korean War, the Berlin crisis or the Vietnam era.

You do not qualify for retired pay because you were a member of the Army Reserve during World War II but did not serve on active duty. You state that you reported for recall, but were erroneously found physically unqualified. The Board cannot correct Army records and therefore no action can be taken to show active service during World War II.

Since you served in the Naval Reserve almost continuously during the period from 28 June 1954 until you retired on 1 June 1981, the Board considered whether to grant you one day of active service other than for training during the applicable periods after 28 June 1954. The Department of the Navy's policy in cases such as this is set forth in a memorandum of the Assistant

Secretary of the Navy dated 11 April 1997 which states, in pertinent part, as follows:

... Board for Correction of Naval Records panels should be informed that retirement benefits may be awarded in the following circumstances:

(1) The petitioner had requested to serve on active duty (other than for training) and the request had been denied, or petitioner establishes that making such a request would have been a futile gesture;

(2) That the petitioner served in a named service or otherwise served the war effort in a manner characteristic of military service; and

(3) The petitioner substantially incurred the same risks as military members who served on active duty.

This policy resulted in the Board correcting the records of Merchant Marine officers who had Naval Reserve commissions during World War II, but were not called to active duty because they were needed as Merchant Marine officers, to show one day of active service during World War II. Since these officers met all of the other requirements for reserve retired pay, this action allowed payment of retired pay. The Board has routinely denied other cases such as yours that do not meet the specific criteria set forth by the Assistant Secretary of the Navy.

In its review of your application the Board noted that you are contending that you were improperly denied active service in World War II because of an erroneous determination of your medical condition. However, as indicated, this Board cannot correct Army records. Given the circumstances the Board found that you did not meet the active reserve requirements while you were in the Naval Reserve and concluded that a correction of your record was not warranted. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

You should consider submitting an application to the Army Board for Correction of Military Records because that board can address your allegations of error and injustice during World War II and may apply different criteria in cases such as yours.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records.

Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director